

● LEGAL EDUCATION IN INDIA: THE EMERGING CHALLENGES AND PROSPECTS



Amit Dhall*

Abstract

Education plays a vital role in bringing out social change. As a potential instrument and a powerful medium of bringing changes in the society it enables drawing out of the best in the body, mind and spirit of individuals. It equips an individual with ability to understand and reflect upon knowledge and processes and to act in a responsible manner. Legal education is a species of main stream education involving the study of law. It inculcates the ability to make use of law, to analyze it and to criticize it as a member of the legal community. It focuses on the individual freedom as also on the development of society, solidarity and strengthening of rule of law. The progress of high quality legal education is a prerequisite to high quality legal practitioners. The present papers analyses emerging challenges and prospects in the context of India.

Key words

Legal Education, Social Change and Development.

INTRODUCTION

Education plays a vital role in bringing out social change. As a potential instrument and a powerful medium of bringing changes in the society it enables drawing out of the best in the body, mind and spirit of child and man. It equips an individual with ability to understand and reflect upon knowledge and processes and to act in a responsible manner. The purpose of education is to impart knowledge to dispel ignorance. Ignorance is the mother of all the evil and all the misery we see. Education is a liberating force to get rid of such miseries. Proper education of the people helps to cure their miseries. The purposes of higher education are several folds. They relate to growth and development of student, the discovery and refinement of knowledge, and social impacts on the community.

PURPOSE OF LEGAL EDUCATION

Legal education is a species of main stream education involving the study of law. It inculcates the ability to make use of law, to analyze it and to criticize it as a member of the legal community. It focuses on the individual freedom as also on the development of society, solidarity and strengthening of rule of law. The progress of high quality legal education is a prerequisite to high quality legal practitioners.¹ Law is the guardian and vindicator of justice and liberty. Legal education involves the

* Assistant Professor, Amity University, Noida(India). Author may be contacted at amit.dhall@rediffmail.com

¹ "Developing Legal Education in the Common Wealth: Some Current Issues", Commonwealth Legal Education Association, 2006, at 12

education of laws generally to lawyers before entry into law profession. Law of a society is the standard of its social values. The need to assess and revise the curricula and methodologies of law courses with an objective to upgrade them for meeting the new challenges and the needs of the society is felt worldwide.

Legal education may serve the society by imparting to law students general and cultural education making them good law abiding citizens. The aim of legal education is to bring out among students the aptitude, interest, commitment, skills and knowledge necessary to perform variety of roles in society including works for socially excluded people and the poor at the local level, to espouse the cause of justice. The rapidly growing Indian economy needs to update its legal education mechanism to suit to the requirements of the competitive world.

Legal education and Legal Aid is State's duty and not Government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. The Supreme Court in Hoskot's case held that even so we uphold the right to counsel not in the permissive sense of Article 22(1) but in the peremptory sense of the Article 21 confined to prison situations. The legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only under Article 39-A but also by Articles 14 and 21 of the Constitution. It is *sine qua non* of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law. In a democracy the machinery of justice must be readily accessible to all. Equality before law and equal protection of law guaranteed by our Constitution will merely be a formality.

The progress of high quality legal education is a prerequisite to high quality legal practitioners. The need to assess and revise the curricula and methodologies of law courses with an objective to upgrade them for meeting the new challenges and the needs of the society is felt worldwide. Law of a society is the standard of its social values. The aim of legal education should be to equip the law students with qualities of good lawyer having mastered the theory of law, its philosophy its functions and its role in a democratic society. The emphasis of legal education must be on preparing legal professionals as also good citizens including legislators, judges, policy makers, public officials, civil society activists having altruistic feelings and sense of social service.

LEGAL EDUCATION SYSTEM IN INDIA

Traditionally universities in India offered Legal education as a three years graduate degree. The eligibility requirement for the Bachelor of Law was that the applicant already has a Bachelor's degree in any subject from a recognized institution. The legal education was imparted only at law departments in the university system and through affiliated law colleges. Now some institutions also offer an integrated five years BA-BL course after twelve years of schooling.

In India the legal education is regulated and controlled by Bar Council of India. It is imparted the at different levels, namely, law Universities, government law colleges, private law colleges (government aided) and private law colleges (non-aided). Imparting practical skills to law students is a compulsory component of legal education in all the institutions imparting the legal education. The University Grants Commission approved one-year LL.M. courses in India on 6 September 2012 and the guideline for the same was notified in January, 2013.² "We have an immense problem with the faculty, especially with more than 900 plus law schools all over the country,



we suffer for want of faculty. The curriculum needs to be regulated and we will have to gradually upscale and upgrade,"

Impact of Globalization on Legal Education in India

Globalization has thrown up new challenges to legal profession. It is the process by which a given local condition or entity succeeds in expanding its reach over the globe and by doing so, develops the capacity to designate a rival social condition or entity as local under its impact. Globalization makes it increasingly difficult for legal study to be contained within the territorial boundaries of national legal systems. The operation of formal State law can be understood by taking into account the proliferation of supranational sources of law such as those emanating from the European Union or WTO. Sovereignty at the international level is being undermined by greater acceptance of interference in the internal affairs of states egg through the doctrine of humanitarian intervention. While traditional jurisprudence focused exclusively on municipal and public international law; globalization requires notice of other forms of legal ordering, such as the *sue generis* legal order of the ED. A prominent example is transnational *lex mercatoria*, which regulates interactions between global commercial firms outside official law through practices such as international arbitration. We need to construct a theory of law that reaches across legal cultures .and to develop a conceptual language that can make sense of the relations between e.g. national and supranational, formal and informal, sub-state and non-state contexts.

There is a need to expand the list of concepts includes in general jurisprudence to provide more apposite terminology e.g. group, dispute, institution, process, function, decision, regulation, efficiency, effectiveness etc, for enhancing understanding across legal cultures. To meet challenges of globalization, a lawyer needs to have a vision of emerging problems, zeal to serve the cause of justice and the ability to forge new tools and techniques appropriate to the changing needs and times. At present the legal education is inadequate to the tasks ahead calling for an all out effort by taking stock of past attempts and chalking out the future cause of action. The basic element of a free and fair society is a 'well functioning legal system.' A successful legal system provides all the facilities and fulfils all the requirements of the peoples. The 'rule of law' makes a system good legal system in which all persons are subject to law In India, the legal profession and legal education both are administered by the Bar Council of India. The Indian legal rules including the constitution of India are flexible because a rigid law can't survive in progressive society and in context to this the law usually changes from time to time towards the progressive future of Indian society. To have a successful legal system, there must be a 'rule of law', and to contend this we need some qualified soul and in this regard the role of lawyers and the judges mainly in interpretation is very crucial. So, we need to robust the mettle of the future lawyers and further the mythology of the law colleges according to global legal education system.

The concept of National Law Universities is the latest institutional development which is making our students at par with foreign students in the global scenario, at present there are 10 NLU's operating. These are established with the view of revamping the whole legal set up in the country with the latest trends gaining ground around the globe

² UGC released guidelines and course structure for One Year LL.M degree on 9 February 2013. This may be introduced from academic year 2013-14.

WEAKNESS OF INDIAN LEGAL EDUCATION

The course content for these courses is decided by the universities with guidelines from the bar council of India, under the Advocates Act inter alia has the function to promote legal education to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. The Bar Council of India, Rules provide for compulsory and optional subjects to be taught in the LL.B course Rule (9) (1) lists 6 subjects for Part- 1(compulsory): Rule 9 (2) lists 21 subjects for Part 11 (compulsory). Rule 9(3) lists 15 subjects (optional) out of which three have to be selected.³ A fresh UGC Model Curriculum was prepared by the Curriculum development committee constituted by UGC in 2000 which was circulated to various universities for revision of their law courses. Despite measures and recommendation to equip the Indian Law graduates with better professional capabilities the challenge posed from international as well as the cross country institutions is imminent. Some major shortcomings of our legal education system are:

- a) **Easy Entry in Legal Education:** Legal education has nowadays emerged as a promising business activity for the law institutions which are mostly run by builders and industrialists. The main problem is that the team of Bar Council and the university which is responsible for the inspection of colleges seeking permission to start law courses.
- b) **The teaching facilities and techniques:** The law schools are still accustomed to the age old method of teaching through lectures in a class room. No heed is paid to these suggestions and recommendations made by the committees assigned the role of upgrading education. The students are least concerned about gaining knowledge rather their emphasis is on the fulfillment of minimum requirement of passing the course.
- c) **The faulty Examination system:** The laws schools adopt the traditional examination pattern. The malady of covering a part of the prescribed syllabus and fallacy of memorizing the selected questions rules the roost. The grade card of students is reflection of their ability to mug up few topics instead of their analytical and practical attributes.
- d) **The irrelevant syllabus:** Even after being asked by the UGC Committee and Bar Council of India for upgrading of syllabus of law courses here remain a lack of uniformity in law curriculum of different Universities. Further the inclusion of too many subjects in the syllabus has diluted the concept of teaching skills and research orientation .Law education must be made more relevant to the profession and its challenges.⁴
- e) **Vast differences among Law Institutions:** The increasing level of differences amongst the level of educational institutions have created a big divide into 'elite' education groups and the rest of institutions. The culture and teaching learning process of these law institutions differs widely as regards the student learning outcomes as also behavioral growth of the passed out candidates.
- f) **Shortage of good teachers:** Generally the law colleges fail to attract talented law professional for joining as teachers in their institution. The requirement of requiring the NET qualified applicants as lecturers has invariably limited the

³ The Advocates Act 1961, Section 7(1)(b)

⁴ The Legal Education and Professional Training, 184 Report, Law Commission of India, 2002, at 53



choice of appointing good teachers. Also selection committees, in different universities are restricted to make free judgments of the quality of teacher.

- g) Problem of Placement:** Students usually complete their placement with a lawyer, NGO or a corporate house. The law students are expected to learn the skill of reading and maintaining case files, legal research, drafting and client interviewing and counselling. Students are required to maintain a diary of their visits to lawyer's chamber and courts recording the work they did there and the proceeding observed. Their diaries and their preparation for the mock trial and moot court do reflect their learning from placement. Practical training in law schools imparted though choosing one of these methods or their combination, namely, legal and clinic, class based lectures and simulation, and external placement.

CHALLENGES BEFORE LEGAL EDUCATION IN INDIA

The emergence of new economy, globalization, privatization and deregulation has thrown up new challenges in the field of legal education throughout the world. The revolutionary changes in information and communication technologies require corresponding changes in the legal system. Globalization and the retreat of the state from traditional role have raised new legal issues concerning methods of protection of poor and marginalized section from further impoverishment. The very nature of law and legal institutions are in the midst of paradigm shift. The expectations of the country and the people from law and legal services in the coming years requires the State to evolve the best strategy to strengthen professional legal education while promoting wider instruction in law as a liberal academic discipline. This requires an appropriate model to achieve supervisory and control mechanism to ensure accountability on the part of professional schools of law in maintaining standards of teaching, research and extension activities. The unmet legal needs of different sections of society, delay and cost in accessing justice, impact of globalization on equality and human rights, vast technological changes especially in information and communication, the relative incapacitation of the state by market domination and the role of professions in justice, peace and development.⁵ In bringing forth all these changes law and lawyers play a decisive role of facilitation, moderation and control. It is the nature of and access to institutions and procedures which make justice possible. In structuring the institutions and procedures, particularly in periods of transition, lawyers will have to assist communities, interest groups and governments keeping in mind the requirements of equity, justice and fairness.

Following are some of the challenges facing legal education in the country:

- a) Physical infrastructure and financial resources:** The law schools in India have to recognize the need for creating sound physical infrastructure and for developing research projects and should take initiatives to encourage faculty members. Though, the infrastructure of the national law schools is better than what exists in the law departments of traditional universities its improvement should be across the board, including in universities. The law graduates should be inspired and trained so that they are involved in reflecting upon the various problems that confront society. Academic freedom to think and contribute can only be ensured if universities have the necessary physical infrastructure and financial resources.

⁵ 184th Report, Law Commission, 2002, pp. 55-56; Report of National Knowledge Commission, 2007

- b) Promotion of philanthropic initiatives in field of Legal Education:** In legal education philanthropy is rare and is by and large a states sponsored endeavour or an unimpressive commercial enterprise devoid of high academic standards. Initiatives to encourage philanthropy are required for promoting excellence in legal education and research in the country. In fact the proportion of philanthropic contributions in total expenditure on higher education has declined in the last decades. Efforts ought to be made by all stakeholders, including the law schools, the bar, the bench, the law firms and corporations for promoting philanthropic initiatives in legal education and research.
- c) Qualified teachers and research aptitude:** Good teachers and researchers in the law schools is also a great required in legal education to motivate the students and impart better education of law, including clinical legal education .However because of poor incentives the young talents do not prefer to choose teaching as profession or those who are in these fields are switching towards other lucrative professions.
- d) Privatization of Legal Education:** The privatization of legal education has resulted in mushrooming of law colleges resulting in the degrading of Indian image of legal education at internationally. It has not been helpful to raising the academic standards in terms of either the quality of the faculty and students or the promotion of research within institutions which has become mediocre commercial ventures.
- e) Coming of Foreign Universities and Legal Professionals in India:** The emergence of foreign universities and legal professionals in India have also posed serious problem before legal education .The question arises that when in the same expense foreign degrees can be obtained why a student to study in Indian law schools. Similarly, the avenues of legal professionals in India will be obtained by foreign professionals. Our aim should be to produce lawyers who will be most sought after professionals to appear in foreign countries. When multinationals establish firms in India, they too will require the services of lawyers whose competence is comparable to the best anywhere. Further, the law schools in the country should also have special topics dealing with the Corporate, Taxation and Bankruptcy laws of different countries. The curriculum should be designed to equip the students for handling problems that involved more than one legal system. The students should combine language skills and cultural familiarity with rigorous and direct legal training. The progress in the field of internet technology in combination with globalization poses more formidable challenge to territorial sovereignty than even before. In the world of the cyberspace it is difficult even for the communicators let alone the authorities of the concerned from which and to which the communication is directed, to know that their messages are actually crossing territorial borders. Cyber torts, Cyber racism and Cybercrimes not only undermine our understanding of territorial state as the ultimate final authority within its borders but raise a number of issues relating to prevention, investigation and trial of the offenders. Therefore, in these circumstances there is necessity of reformulation in legal education as well in India.

The position of legal education in India before independence was dismal and even degeneration continued after independence. But because of continuous and concerted efforts of government and academicians, changes took place. Debates on teaching methods, introduction of clinical legal education and focus on continuing



education along with infrastructural developments became tools of quality legal education. But one thing which actually helped in ensuring high pedestal to legal education in India is removal of sense of complacency from the thinking process of society regarding law as a career not as a last resort. Similarly, the opening of avenues to legal professionals in various areas also enhanced the craze of subject. Globalization and the changing dimensions of the Indian economy and polity have thrown up new challenges of governance.

SUGGESTIONS TO MAKE LEGAL EDUCATION MORE EFFECTIVE

The appropriate step needs to be taken in the matter so the law graduate acquires sufficient experience before they become entitled to practice in the Courts. The legal education must reflect participation of representative of the Judiciary, bar council and UGC. The Bar Council should regulate and supervise the affiliation of colleges. There must be an entrance examination to Law Colleges. It is advocated the Five year law course after 10+12 level. Professional ethics should be made a compulsory course. The case methods and problem methods should be made compulsory and must carry more marks than theory. Necessary amendments should be made to supplement lecture method with problem method and other modern technique of importing legal education. Parting in moot courts, mock trials and debates must be made compulsory and marks awarded. Practical training in drafting pleadings, contracts can be developed in the last year of the study. Students' visits to the courts are made compulsory so as to provide greater exposures. The legal education committee should lay down norms for the conduct of these examination. It may be noticed that the main focus of this committee was on regulating admission to law colleges and admission to the Bar and not on community responsive legal education. However, introduction of compulsory practical training and clinical methods as per the directions of the Bar Council of India, have brought to focus the potency of legal education to become more responsive to community needs in addition to becoming professional.

Practical skills of a lawyer are taught/learned through one of the three ways: first classroom teaching classroom teaching coupled with court visits; second through placement with lawyers; and third live-client cases handled in a legal aid clinic or *Lok Adalats*. Following topics are covered in the course of clinical Legal Education: Client Interviewing and Counselling Legal Research, Getting Familiar with Courts in Delhi (Structure, Jurisdiction and Colloquial Words Used) Stages in Criminal/Civil Case, Case Analysis, Planning and strategy, Negotiation, Mediation, Trial advocacy, framing of Issues/Charges, Bail/Bond, examination-in-chief, cross examination, adducing evidence, arguments, appellate advocacy; moot court; professional ethics, legal aid, *lok adalats* and public interest Litigation, teaching methods. The course is taught classroom teaching coupled with placement with lawyer for the weeks useful for dealing with different aspects of the course. The choice of methods is dependent on the skill/s to be learnt. I prefer to use the following teaching methods while teaching different topics. Brain Storming introduction to practical skills course, experiential client interviewing/client confidentiality, simulation moot courts, negotiation role plays client interviewing, group discussions, legal aid, games, examination-in-chief, pyramid fact gathering and recollection, active listening, sub-groups peer observation and feedback, hypothetical problems, ethics case methods, lecture court structure/information, handouts course material/points to remember. It is necessary to mention, however, that the most difficult task while using three

alternate methods of teaching is to maintain the time limits of the classes for various activities. Usually a small lecture on the subject followed by instructions on the activities precedes the exercise. The lecture is the easiest to contain within the time limit. Initially the instructions in the beginning take more time for students to comprehend. They are not used to be actively involved in classes in other courses and in take them some time before they start getting familiar with the different methods of learning employed in these classes. Once they get into the activity, they get so involved in it that they cannot keep track of the time and usually are not able to conclude their task within the time prescribed. Many a times, it becomes necessary to postpone the analysis and feedback of the exercise for a subsequent class and that affects the schedule of the next class.

For making legal education more effective and legal profession more competitive and value oriented certain suggestions may be taken into consideration. Firstly, the global or transnational curriculum should be developed keeping in view the challenges of globalization; high technology crimes and changing concept of sovereignty. Secondly, the teaching methodology should be upgraded and the combination of lecture method, case study method and Socrates method along with tutorials and other modern techniques of imparting legal educations such as power-point presentations, audio-visual demonstrations, video conferencing etc. The Socratic Method refers to the teaching style used by most law professors. Instruction by lecturing is quite limited and more often takes the form of directed questioning. These methods help to sharpen critical thinking skills and the ability to distinguish between subtle underlying principles of a certain area. Thirdly, there is need for original and path breaking legal research to create new legal knowledge. Fourthly, lawyers must be trained to specialize in international trade practices, comparative law, conflict of laws, international human rights law, environmental law, gender justice, space law, bio-medical law, bio-ethics, international advocacy etc., They must also acquire a requisite knowledge of foreign laws like the American, French, German, Chinese and Japanese law. For instance, in South Korea, in the last 10 years, the curriculum has been expanded to include not only the above subjects, but also International Business, International Contracts, International Civil Procedure and laws of England, America, France and Germany.

Fifthly, the law schools must improve their library facilities to include use of computers and internet so that the students and faculty are able to draw regularly from the internet sources. Sixthly, the law students need to enhance their ability to argue, explain and convince points of law. Good command over spoken and written language, effective oral skills, diction and extensive reading are pre-requisites that go without saying. Knowledge of a foreign language is important to be a lawyer in the global economy. Law students should be provided with the opportunity to learn a foreign language of their choice. Lawyers, solicitors, legal executives all need good intellectual ability, the ability to assimilate and analyze facts quickly. Law students hence need to develop their ability to distinguish the relevant from the irrelevant, screen evidence, and apply to the law to the situation under scrutiny. Moreover, in order to retain good teachers in the law school who are the backbone of legal education facilities and incentives should be given. This may include, career development opportunities within the law schools; development of research infrastructure including the resources to organize and participate in national and international conferences, and undertake serious research; a harmonious environment that fosters mutual respect; governance of the law schools in a transparent fashion; and, above all, faith in the leadership of the institution that excellence will not only be promoted as a general policy, but affirmative efforts will be



taken to encourage and support excellence. Further, the task of a teacher is not only to fill in the students with contents of his narration but to bring out the hidden talent in the students. The students and teachers have unlimited potential for collaboration in exploring any aspect of a subject. Thus, there is need of continuing education for the law teachers and to infuse in them the desire to do research work. Appropriate means must be devised so that the law teacher can go to the law courts to gain the practical experience and his experience, knowledge and proficiency may be used in proper manner and this avenue will attract many good students towards legal profession.

Lastly, legal education must be socially relevant and justice oriented. This concept of justice education in the field of legal education means that the law school curriculum should entail certain programs like *Lok Adalats*, Legal Aid & Legal Literacy and Para legal training. The end-semester examination should be problem-oriented, combining theoretical and problem oriented approaches rather than merely test memory. Clinical legal education should be given more emphasis, so that students can learn the law through experience and experience the role of law and legal in society along with acquiring professional skills. Autonomy, flexibility and freedom should be given to law schools, particularly departments in Universities.

There is need to actively seek and encourage philanthropic initiatives in the field of legal education. The system of creating endowments both individual and corporate has to be significantly promoted. Financial supports should be provided by Governments to law colleges etc. Internship and externship facilities should be arranged at law schools. Thus, the aim of legal education in India should be to produce legal professionals of such calibre as Bradley says in order to be an accomplished lawyer, it is necessary, besides having a knowledge of the law, to an accomplished man graced with at least a general knowledge of history, of science, of philosophy, of the useful arts, of the modes of business and of everything that concerns the well-being and intercourse of men in society. Trained in such profession, and having these acquirements, and two things more, incorruptible integrity and a high sense of honour. In the law schools, students are, by and large, evaluated on the basis of exams that take place at the end of the term together with some activities like project making and class participation.

Various methods and techniques of teaching are currently being used in law schools which range from lecture method to Socratic Method to problem based method. These methods have their own merits but at best they give the student knowledge about law and sound analytical capability. However, if students participate in the process of legal aid under the aegis of Legal Aid Clinic of their law school they get hands on experience in the practice of law. So, usual methods of teaching when combined with legal aid can produce wonderful results whereby the students who steps out of the law school are already trained as a lawyer. Organizing legal aid camps and distribution of legal aid literature are effective tools of spreading awareness about law which ultimately contributes towards legal enforcement. Internships are other opportunities where law students go to an organization to work where they can contribute their legal knowledge and in the process gain valuable experience of working in the field.

Teaching in the modern world is a well-developed profession marked by ranks of teachers which characterize the hierarchy in the teaching community. Progress, for a teacher, would naturally mean moving up this ladder of hierarchy. Various ways and means have been devised by the University Grants Commission in this regard. One of the major factors to be taken into consideration in this exercise is the number and

quality of publications that a teacher has been able to generate. This emphasis on research is placed keeping in mind the larger perspective of promoting research amongst academicians. On the same lines, the number and quality of cases argued by a teacher concerning legal aid should become a criterion for evaluating a teacher for the purposes of his promotion. In this manner, we shall be improving the quality of law teaching in the country together with building capacity for legal aid.